

03cv17000zbf-ord(NextBellwethers).wpd

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: WELDING FUME PRODUCTS  
LIABILITY LITIGATION

:  
: Case No. 1:03-CV-17000  
: (MDL Docket No. 1535)  
:  
: JUDGE O'MALLEY  
:  
: MEMORANDUM AND ORDER  
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This Order confirms certain rulings communicated informally to the parties earlier by the Court and the Special Master.

In accordance with prior policy, the Court will choose subsequent bellwether trials on a semi-random basis. Specifically, when choosing bellwether cases, the Court will first identify all MDL cases where plaintiff's counsel has certified he "believes in good faith that he and his client will pursue the matter to trial."<sup>1</sup> From this list of cases, the Court will then identify the subset of cases that: (1) apparently involve application of state law different from those states' laws applied in prior bellwether trials; and (2) are properly venued in the Northern District of Ohio. The Court will then pick bellwether trials randomly from this subset.

Pursuant to this policy, the Court has randomly picked the next bellwether case: *Cooley v. Lincoln Elec. Co.*, case no. 05-CV-17734, trial of which shall commence on **March 4, 2009**. The Court directs the parties to confer and submit a proposed case management order with appropriate deadlines as soon as possible.

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<sup>1</sup> Order at 3 (docket no. 1888) (requiring plaintiffs' counsel to so certify, or move to dismiss or withdraw, following medical records discovery).

Further, the next-following bellwether trial shall commence on **September 14, 2009**. The Court will pick the case for this trial slot in the next several weeks. Plaintiffs have a deadline of October 14, 2008 to identify any other certified cases where the plaintiff is willing to waive objection to venue being proper in the Northern District of Ohio.

**IT IS SO ORDERED.**

/s/ Kathleen M. O'Malley  
**KATHLEEN McDONALD O'MALLEY**  
**UNITED STATES DISTRICT JUDGE**

**DATED:** September 15, 2008